YAACOB BIN ABDULLAH v. MUNAH BINTI AWANG LEMBUT & ORS.

[A.C.J. (Mohamed Zahir J.) October 6, 1977]

[Kota Bharu — Originating Motion No. 12 of 1977]

Land Law — Sale of land in Kelantan — Purchaser going into possession of land — Application for distribution after death of vendor — Area declared settlement area — Inquiry — Appeal to District Officer — Appeal heard by Assistant Collector of Land Revenue — Procedure in Land Settlement office — Kelantan Land Settlement Ordinance, 1955, ss. 2, 4, 5, 6, 13 & 16.

The appellant purchased a piece of land in 1961 from one Mamat, who has since died. After the purchase the appellant went into occupation. In 1970 the mother of the deceased applied for distribution of his estate and the Collector after hearing evidence ordered the land to be distributed to the extent of 30/48 shares to the first respondent and 18/48 to the appellant. The appellant filed a caveat against the land, so that the order of the Collector could not be registered. Subsequently the land was declared a land settlement area. An inquiry was held and it would appear that the beneficiaries, the respondents, agreed that the land be registered in the name of the appellant. The first respondent appealed to the District Officer but the appeal was heard by an Assistant Collector of Land Revenue, who ordered the land to be reverted into the name of the deceased. The appellant appealed against the order.

Held: (1) the Assistant Controller of Land Revenue had no power to hear the appeal and his order was wrong;

(2) the land should be registered in the name of the appellant with possessory title and the first respondent be at liberty to file a suit in the High Court against the appellant under section 10 of the Kelantan Land Settlement Ordinance.

ORIGINATING MOTION.

Yusof bin Haji Mohamed Ner for the appellant.

Ahmad Rastum for the first respondent.

Cur. Adv. Vult.

Mohamed Zahir J.: The appellant appeals against the decision of the District Officer dated July 6, 1976 made under the Kelantan Land Settlement Ordinance, 1955. The appellant and respondent 1 appeared by counsel whereas respondents 2, 3 & 4 appeared in person.

The facts of the case briefly were as follows. The appellant in 1968 purchased the land held under AA 37/61 (now H.S.(M)26/69), Mukim Baka, Machang, from one Mamat bin Che Muda who has since died. After the purchase, the appellant went into occupation. In 1970, one Esah binti Haji Abdullah, the mother of the deceased applied for distribution of his estate in the Land Office under the Small Estates Distribution Ordinance 1955. The appellant attended the hearing together with respondents No. 1, 2, 3 who were the beneficiaries of the deceased. From the notes of evidence, the beneficiaries admitted the sale of the land to the appellant and the appellant admitted that he had paid to the deceased only $880 representing one-half of the purchase price of the land. The Collector ordered the said land be distributed to respondent No. 1 to the extent of 30/48 shares and to the appellant 18/48 shares of the land and it was further ordered that respondent 1 to pay a sum of $590.75 being his labour (*usaha*) put into the land.

The appellant being dissatisfied with the decision, instead of lodging an appeal against it, lodged a caveat against the said land and as a result the said order of the Collector could not be registered in the register of titles.

Subsequently the area was declared a settlement area under the Kelantan Land Settlement Ordinance, 1955. On April 20, 1976 there was an enquiry before what is termed as a Pegawai Bicara under the Ordinance. The note of the enquiry (Exhibit P7 in the appellant's affidavit) was scanty. It stated that the beneficiaries were present as in Form VIII and that all agreed that the land be registered in accordance with P.P.K. which stands for Perentah Penyelesaian Kumpulan (Group Settlement Order) and P.P.K. No. 3 as disclosed in the note contained the condition of the land and the quit rent and the name of the appellant. In other words, it would appear that the beneficiaries that is the respondents 1, 2, 3 & 4 herein agreed that the land be registered in the name of the appellant alone.

However, after such order respondent No. 1 alone appealed to the District Officer under section 16(1) of the Ordinance claiming her rights under the order made in the Distribution Suit whereunder she was entitled to 30/48 shares in the said land. She further claimed that she had paid the beneficiaries in terms of the said order. But unfortunately it would appear that it was not the District Officer who heard the appeal. It was heard by one with the initials P.P.H.T. and which stood for Penulong Pemungut Hasil Tanah, an Assistant Collector of Land Revenue. This is contrary to section 16(1) of the Ordinance which intended that the appeal should be heard by the District Officer personally as provided under section 2 of the Ordinance. This section provides as follows:

"'District Officer' means a District Officer or a Collector of Land Revenue of a District in which there is for the time being a Settlement Area and, except in sections 15 and 16, includes an Assistant District Officer or an Assistant Collector of Land Revenue, unless otherwise provided."

Further, the Assistant Collector in the notes stated that the hearing was intended for the purpose of record only as the beneficiaries of the deceased were not present but after declaring that the hearing was for record purpose, the Assistant Collector went on to give an order that the said land be reverted back into the name of the deceased. This is obviously wrong apart from his having no authority he had expressed that the hearing was for only record purpose. The appellant now appeals against such order.

At the hearing before me, counsel for the appellant withdrew the appeal against the 5th respondent, the Official Administrator. The Official Administrator should not have been joined as a party. Respondent No. 5 was accordingly struck out from being a party.

Counsel for the 1st respondent conceded that the order by the Assistant Collector was wrong. In the circumstances, this court could either —

(a) order a proper appeal to be heard before a District Officer; or

(b) order that the land be registered in the name of the appellant with possessory title and that the 1st respondent be at liberty to file a suit in the High Court against the appellant under section 10 of the Ordinance.

After considering that there was evidence in the hearing before the Hearing Officer that the 1st respondent had agreed to the order made by the Hearing Officer, I came to the conclusion that alternative (b) above would be more appropriate. In the Civil Suit, it would be more convenient for the 1st respondent to plead mistake, fraud, *non est factum* and others, rather than in the appeal before the District Officer where counsel is seldom admitted even though if the District Officer gives permission an Advocate & Solicitor may be allowed to appear (section 5(4) of the Ordinance). Both counsel agreed that this was a proper decision in the circumstances and I so order accordingly and by consent there was no order as to costs.

After having disposed of the case, I take this opportunity to comment on the procedures taken in the Land Settlement Office. It is obvious that the Ordinance provides two stages of action before coming to the High Court. First, the enquiry under section 4(3) and the second, the appeal to be instituted within 28 days after the conclusion of the enquiry to the District Officer under section 16 of the Ordinance. The confusion arises as the law provides that both the enquiry and the appeal be conducted or heard by the District Officer. While although the meaning of the words "District Officer" as given above under section 2 includes Collector of Land Revenue, Assistant District Officer and Assistant Collector of Land Revenue, it does not prohibit the District Officer personally from hearing the enquiry and the undesirable result will arise if any person aggrieved by the decision of the District Officer personally files an appeal which will be heard by the same District Officer.

So, to avoid any confusion, the District Officer personally should not be made to hear the enquiry. The officer hearing the enquiry should be either Collector of Land Revenue or Assistant District Officer, or Assistant Collector of Land Revenue. In my opinion, the practice of calling any of these officers as in this case "Hearing Officer" or "Pegawai Bicara" is inappropriate as this will lead to confusion considering that the District Officer is also a Hearing Officer when he presides at the appeal. The more suitable term to be used for this purpose, in my opinion, is Enquiry Officer after which his actual designation whether he is a Collector of Land Revenue or Assistant District Officer or Assistant Collector should be written down. The notes at the enquiry should be sufficient to base a judgment and should not be scanty. In this case before me, the notes of hearing after quoting the usual heading merely state as follows:

"Waris-waris simati hadzir bagaimana Borang VIII. Semua bersetuju tanah ini di-daftar dengan nama sebagaimana dalam P.P.K. di-bawah."

There was no one appearing or affirming or giving evidence. There were no examinations or cross-examinations and no mention was made as to the interest of the claimant, that is the appellant herein. Particulars of the land, the registered owners, the name of the claimant and his interest and the names of respondents should be written in full. The evidence to be taken should be in the usual manner taken in the Subordinate Courts and must also have grounds of judgment. There should be affirmations admitted under the Oath and Affirmation Ordinance 1949. The order must be clear whether it is under section 8(1) giving possessory title or under section 7 giving proprietory title. However, a proprietory title should not be granted unless there is very clear evidence that the donee is a proprietor and in case of doubt, possessory title should be given so as not to deprive any aggrieved party the right to file a Suit to the High Court under section 10 which provides that only a person aggrieved by an order for possessory title may file a suit. The Enquiry Officer should avoid going into the questions as to the validity of any document tendered or capacity of any party as these may lead into the complicated questions of law, such as *non est factum*, fraud, insufficient instrument, lack of consideration, which should properly be left to the court. The Enquiry Officer needs only consider as to who was in possession and grant him possessory title and leave the aggrieved party to take up the matter as to those questions of law in the court.

I noticed cases that came before me either by way of appeal under section 16 or by way of Suit under section 10 of the Ordinance, were invariably in the form of rehearing before the District Officer. This is because all enquiries before the Hearing Officer were scanty, as in this case. As such, appeals to the District Officer are in the form of a rehearing, which would inevitably be, as no proper evidence was taken earlier. I am of the opinion that this is a wrong practice. The law gives the right of appeal from the enquiry to the District Officer and if no proper enquiry was held, then that right is withheld from the subject. It can however be argued that this practice had cut down work to the minimum and saved time. It might be so, yet it is contrary to the law. On the other hand it can be argued that proper taking of the evidence at the enquiry could avoid redundancy of work and can save appeal time if there is to be no rehearing. More important still is if the case is appealed further to the High Court, counsel for both parties and the judge must consider the evidence adduced at the enquiry and the arguments at the appeal and the respective grounds of judgment. Further, by taking a proper record of the hearing at the enquiry will prevent any unsuccessful party from changing his story at the hearing of the appeal.

I am informed that the number of disputed cases has not been many. The majority are uncontested. This being the position, the Enquiry Officer should hear the contested cases in the Land Office where there will be a proper hall and chairs and tables and other facilities. I say this because I learn that land settlement cases are now being heard on the field such as in the Balai Raya, Pejabat Penggawa or Madrasah where the land is situated. The cases whether contested or not are disposed of one after another. Whilst there is no objection for the non-contested cases to be heard in this manner, as this would save the kampong people from a lot of inconvenience, but with the contested ones, the hearing should have some solemnity and not to be rushed through as to render that justice is not seen to be done. It is therefore not surprising that the notes of evidence are scanty as proper hearing cannot be carried out.

The procedure previously followed in cases where the proprietors at the time of the enquiry had died and where the land was a small estate was inconsistent. At times, the District Officer would order the land to remain in the name of the deceased. At times it would be registered in the names of the beneficiaries, if there was consent among the beneficiaries. At times, the land was registered in the name of one of the beneficiaries as an administrator, although no letters of administration have been taken out and at times possessory title would be granted to beneficiaries in possession. The law is silent on this. But it provides for the small estates. Section 6(1) of the Ordinance reads as follows:

"Notwithstanding the provisions of section 8 of this Ordinance, where in the opinion of the District Officer any land within the Settlement Area forms part of a small estate of a deceased proprietor who died intestate not more than six years before the date of hearing the District Officer may proceed to distribute the estate under the Ordinance."

(The Ordinance here means the Small Estates (Distribution) Ordinance 1955).

It is to be noted that only cases where the proprietor died within 6 years before the date of hearing that the District Officer will have the power to distribute the property under the Small Estates (Distribution) Ordinance. Why the law restricts to six years, it is not easily understood, for it would be more logical not to make any such limitation. The law therefore does not give the District Officer the power to distribute in big estates and in small estates where the proprietors had died six years before the date of hearing. Section 13(2) of the Ordinance lends support to this conclusion. This section reads as follows:

"The District Officer may waive any estate duty or estate duty fee payable upon an order or grant issued, in relation to a small estate in a Settlement Area."

It follows that District Officer cannot waive any estate duty or fee in other estates. Therefore, it would be wrong to register the land where the proprietor had died in the name of any person or persons as has been the practice without the estate being fully administered.

In cases where the proprietors have since died at the time of enquiry, I am of the opinion the proper steps to be taken by the District Officer should be as follows:

(a) If death occurred within six years in the case of a small estate, then —

(i) If there is no dispute as to possession, distribute the land under the Small Estates (Distribution) Ordinance.

(ii) If there is such dispute, but the claimant is not in possession, then appoint one of the beneficiaries to be administrator of the estate and grant him limited grant of letters of administration for the claimant to sue under section 14(5) of the Small Estates (Distribution) Ordinance.

(iii) If there is someone in possession who holds it otherwise under the proprietor then grant him possessory title.

(b) In a big estate or if death occurred beyond six years in the case of a small estate —

(i) If there is no dispute as to possession, then retain the name of the deceased as the proprietor of the land, but carry out the works on the land in respect of other matters such as the boundary and the document of title. This order should be under section 7.

(ii) If there is such dispute and the claimant is not in possession, then retain the deceased as the proprietor under section 7 of the Ordinance but carry out other works on the land as under (b)(i) above. The beneficiaries or the claimant may take whatever steps they may deem appropriate later.

(iii) If there is someone in possession who holds it otherwise under the proprietor, then grant him possessory title.

To enable the beneficiaries or claimants to take any steps they may wish in cases falling under (b)(i) and (ii) above, the District Officer should expeditiously declare under section 15 of the Ordinance that the area where the lands concerned situate has ceased to be a settlement area, otherwise as stipulated under section 3(2) of the Ordinance no dealings in respect of the land can be made as long as the land is under the Settlement Area.

I notice that rules made under section 17(2) of the Ordinance are rather incomplete. No procedures are laid for record of claims under section 4(1) of the Ordinance. No provisions for summons to compel attendance of persons to the hearing and production of documents even though this is envisaged under section 17(2)(c) of the Ordinance. No form provided for appeal and there is no requirement made for the memorandum of appeal.

It can be argued that if these provisions were made, they will impose unnecessary burden on the kampong people. But whatever burden there might be it would be more advantageous if these rules are made rather than to be left in confusion which would result in undesirable consequences and perhaps more hardship to the same people whom the law seeks to help.

Order accordingly.

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